

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR SUMTER COUNTY, FLORIDA

SANDRA ZAJAC, WILLIAM ZAJAC,  
and HUGH R. ROGERS,

Petitioners,

Filed Pursuant to Fla. R.  
App. P. 9.100(f)

vs.

Case No. \_\_\_\_\_

SUMTER COUNTY, FLORIDA,  
OTSEGO HOLDINGS, LLC, and  
SUMTER COUNTY OUTDOORS,  
LLC,

Respondents.

\_\_\_\_\_ /

**PETITION FOR WRIT OF CERTIORARI**

Petitioners SANDRA ZAJAC, WILLIAM ZAJAC, and HUGH R. ROGERS (collectively "Petitioners"), by and through their undersigned counsel, file this Petition for Writ of Certiorari to review a major special use permit for a ±1077.69-acre "entertainment park" approved by the Sumter County Board of County Commissioners on January 8, 2013.<sup>1</sup>

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<sup>1</sup> This Petition for Writ of Certiorari is a "bare bones" petition which has been filed solely to timely invoke the Court's jurisdiction. Simultaneously with the filing of this Petition, the Petitioners have filed a Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix. *See Penate v. State*, 967 So. 2d 364, 364 (Fla. 5th DCA 2007) (reiterating that a petitioner who receives an order shortly before the expiration of the thirty (30) day jurisdictional deadline for seeking certiorari review should file a "bare bones" petition along with a request for leave to amend).

## **I.**

### **INTRODUCTION**

This case involves a challenge by the Petitioners to a decision by the Sumter County Board of County Commissioners ("BOCC") to approve a major special use permit requested by Respondents Otsego Holdings, LLC ("Otsego Holdings"), and Sumter County Outdoors, LLC ("Sumter County Outdoors"), to construct and operate a ±1077.69-acre entertainment facility on property adjacent to the Petitioners' single-family residential neighborhoods ("S2012-0004"). The Petitioners respectfully submit that the BOCC's decision: (1) violated the Petitioners' right to procedural due process; (2) departed from the essential requirements of law; and (3) is not supported by competent substantial evidence. Accordingly, the Petitioners request that the Court quash the BOCC's January 8 decision to approve S2012-0004.

## **II.**

### **BASIS FOR INVOKING JURISDICTION**

Jurisdiction to review this action is based upon Florida Rule of Appellate Procedure 9.030(c)(3) and Article V, Section 5(b) of the Florida Constitution.

### **III.**

#### **FACTUAL BACKGROUND**

1. Petitioners Sandra and William Zajac are the owners of residential property in a neighborhood located adjacent to the proposed entertainment facility. Mr. and Mrs. Zajac will be substantially affected by the adverse impacts associated with S2012-0004, including, but not limited to, land use compatibility issues, noise, traffic, reduced property values, and other negative impacts associated with the proposed entertainment facility.

2. Petitioner Hugh R. "Randy" Rogers is the owner of residential property in a neighborhood located adjacent to the proposed entertainment facility. Mr. Rogers will be substantially affected by the adverse impacts associated with S2012-0004, including, but not limited to, land use compatibility issues, noise, traffic, reduced property values, and other negative impacts associated with the proposed entertainment facility.

3. On January 8, 2013, the BOCC held a public hearing on S2012-0004. The Petitioners appeared in person or through counsel at the BOCC's January 8 hearing in opposition to the proposed entertainment facility.

4. At the conclusion of the January 8 hearing, the BOCC voted to approve the proposed entertainment facility adjacent to the Petitioners' neighborhoods.

5. The BOCC's decision to approve S2012-0004 was memorialized in an order rendered on January 23, 2013, in the public records in and for Sumter County, Florida. (App., Ex. A).

#### IV.

#### ARGUMENT

The Petitioners seek review of the BOCC's quasi-judicial decision to approve S2012-0004 for the proposed entertainment facility, and have timely filed this Petition for Writ of Certiorari pursuant to Florida Rule of Appellate Procedure 9.100(c). The Florida Supreme Court has held that such review, although undertaken pursuant to a petition for writ of certiorari, is a matter of right, and not discretionary:

[C]ertiorari review in circuit court to review local administrative action under Florida Rule of Appellate Procedure 9.030(c)(3) is not truly discretionary common-law certiorari, because the review is of right. In other words, in such review the circuit court functions as an appellate court. . . .

We have held that circuit court review of an administrative agency decision, under Florida Rule of Appellate Procedure 9.030(c)(3), is governed by a three-part standard of review: (1) whether procedural due process is accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

*Haines City Cmty Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995) (citations omitted).

A circuit court on certiorari review of a governmental board's quasi-judicial action is the first tier of judicial review, and the scope of review is akin to a direct appeal. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). Thus, a "departure from the essential requirements of the law" for purposes of first-tier circuit court review can be "no more than the same level of error that would require reversal on a direct appeal – a substantive or procedural error that was not harmless error." *Elliott Point Cmty. Group, Inc. v. City of Fort Walton Beach*, 5 Fla. L. Weekly Supp. 787 (Fla. 1st Cir. Ct. June 10, 1998); *see also Cook v. City of Lynn Haven*, 7 Fla. L. Weekly Supp. 176 (Fla. 14th Cir. Ct. Dec. 7, 1999).

The substantive and procedural errors associated with the BOCC's decision to approve the entertainment facility are not harmless. Such errors include, but are not limited to, the following:

- A. The BOCC violated the Petitioners' right to procedural due process by, among other actions, failing to grant a continuance of the quasi-judicial hearing requested by Petitioner Rogers;
- B. The BOCC departed from the essential requirements of law by failing to adhere to the County's Land Development Code in approving S2012-0004; and
- C. The BOCC's decision is not supported by competent substantial evidence.

Consequently, the Court must quash the BOCC's approval of S2012-0004.

V.

**CONCLUSION**

The BOCC's approval of S2012-0004: (1) violated the Petitioners' right to procedural due process; (2) departed from the essential requirements of law; and (3) is not supported by competent substantial evidence. Accordingly, the Court must quash the BOCC's decision to approve S2012-0004.

WHEREFORE, Petitioners SANDRA ZAJAC, WILLIAM ZAJAC, and HUGH R. ROGERS request that the Court:

- A. Accept jurisdiction to hear this case;
- B. Grant the Petitioners' Motion for Leave to Serve an Amended Petition for Writ of Certiorari and an Amended Appendix, filed simultaneously with this "bare bones" Petition;
- C. Issue an Order to Show Cause pursuant to Florida Rule of Appellate Procedure 9.100(h); and

D. Quash the BOCC's approval of S2012-0004.

RESPECTFULLY SUBMITTED on this 11<sup>th</sup> day of February 2013.



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DAVID A. THERIAQUE, ESQUIRE

Florida Bar No. 832332

S. BRENT SPAIN, ESQUIRE

Florida Bar. No. 320810

TIMOTHY E. DENNIS

Florida Bar No. 575410

THERIAQUE & SPAIN

433 North Magnolia Drive

Tallahassee, Florida 32308

Telephone: 850/224-7332

Facsimile: 850/224-7662

dat@theriaquelaw.com

sbs@theriaquelaw.com

tim@theriaquelaw.com

COUNSEL FOR PETITIONERS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic Mail and United States Mail to:

Steven H. Gray, Esquire  
Gray, Ackerman & Haines, P.A.  
125 NE 1st Avenue  
Suite 1  
Ocala, Florida 34470-6675  
sgray@gahlaw.com

George G. Angeliadis, Esquire  
The Hogan Law Firm  
Post Office Box 485  
Brooksville, Florida 34605-0485  
george@hoganlawfirm.com

Chairman Doug Gilpen  
Sumter County Board of County Commissioners  
7375 Powell Road  
Wildwood, Florida 34785  
Doug.Gilpin@sumtercountyfl.gov

this 11<sup>th</sup> day of February 2013.

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Petition complies with the font requirements of Florida Rule of Appellate Procedure 9.100(1).

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR SUMTER COUNTY, FLORIDA

SANDRA ZAJAC, WILLIAM ZAJAC,  
and HUGH R. ROGERS,

Petitioners,

Filed Pursuant to Fla. R.  
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vs.

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SUMTER COUNTY, FLORIDA,  
OTSEGO HOLDINGS, LLC, and  
SUMTER COUNTY OUTDOORS,  
LLC,

Respondents.

**MOTION FOR LEAVE TO SERVE AN AMENDED PETITION  
FOR WRIT OF CERTIORARI AND AN AMENDED APPENDIX**

Petitioners SANDRA ZAJAC, WILLIAM ZAJAC, and HUGH R. ROGERS (collectively "Petitioners"), by and through their undersigned counsel, pursuant to Florida Rule of Appellate Procedure 9.300, move for leave to serve an Amended Petition for Writ of Certiorari and an Amended Appendix, and, as grounds therefor, state as follows:

1. On January 23, 2013, the Sumter County Board of County Commissioners ("BOCC") rendered its written decision approving a conditional use permit requested by Respondents Otsego Holdings, LLC, and Sumter County

Outdoors, LLC, to operate a ±1077.69-acre entertainment facility on property adjacent to the Petitioners' single-family residential neighborhoods ("S2012-0004").

2. Review of the BOCC's decision, as it relates to compliance with the Sumter County Land Development Code, can only be had by a Petition for Writ of Certiorari filed in this Court within thirty (30) days of rendition of the BOCC's decision.

3. Consequently, in order to be timely filed and to invoke the jurisdiction of this Court, the Petitioners must file their Petition for Writ of Certiorari on or before Friday, February 23, 2013.

4. The thirty (30) day time-frame established by the Florida Rules of Appellate Procedure for the filing of a petition for writ of certiorari is considerably shorter than the seventy (70) day time-frame for filing an initial brief in a routine appeal, and the burden placed upon a petitioner – preparing and compiling the record for review – is far greater. For these reasons, the courts should liberally grant reasonable requests for additional time to prepare the record and complete the petition for writ of certiorari. *See, e.g., Cook v. City of Winter Haven Police Dep't*, 837 So. 2d 492, 494 (Fla. 2d DCA 2003) ("As a general policy, all parties should be given a full and fair opportunity to have their disputes settled on the merits."); *see also North Beach Ass'n of St. Lucie County, Inc. v. St. Lucie County*, 706 So. 2d 62, 63 (Fla. 4th

DCA 1998); *DSA Marine Sales & Serv., Inc. v. County of Manatee*, 661 So. 2d 907, 909 (Fla. 2d DCA 1995); Committee Notes to Fla. R. App. P. 9.040 (providing amendments should be liberally allowed under this rule).

5. Due to only recently being retained by the Petitioners, the condensed time-frames associated with the preparation and filing of a petition for writ of certiorari and an appendix, and the need to have the BOCC's hearing transcribed, the Petitioners' undersigned counsel will not be able to complete the Petition for Writ of Certiorari and the Appendix within the thirty (30) day time frame. Accordingly, the undersigned counsel requests that the Petitioners be granted leave to serve an Amended Petition for Writ of Certiorari and an Amended Appendix within thirty (30) days of an Order granting this Motion. *Cf. Penate v. State*, 967 So. 2d 364, 364 (Fla. 5th DCA 2007) (reiterating that a petitioner who receives an order shortly before the expiration of the thirty (30) day jurisdictional deadline for seeking certiorari review should file a "bare bones" petition along with a request for leave to amend).

6. This Motion is being filed solely for the purposes of allowing sufficient time to complete an Amended Petition for Writ of Certiorari and an Amended Appendix, and not for purposes of delay.

WHEREFORE, Petitioners SANDRA ZAJAC, WILLIAM ZAJAC, and HUGH R. ROGERS move for leave to serve an Amended Petition for Writ of Certiorari and an Amended Appendix within thirty (30) days of an Order granting this Motion.

RESPECTFULLY SUBMITTED on this 11<sup>th</sup> day of February 2013.



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DAVID A. THERIAQUE, ESQUIRE

Florida Bar No. 832332

S. BRENT SPAIN, ESQUIRE

Florida Bar. No. 320810

TIMOTHY E. DENNIS

Florida Bar No. 575410

THERIAQUE & SPAIN

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Telephone: 850/224-7332

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Electronic Mail and United States Mail to:

Steven H. Gray, Esquire  
Gray, Ackerman & Haines, P.A.  
125 NE 1st Avenue  
Suite 1  
Ocala, Florida 34470-6675  
sgray@gahlaw.com

George G. Angeliadis, Esquire  
The Hogan Law Firm  
Post Office Box 485  
Brooksville, Florida 34605-0485  
george@hoganlawfirm.com

Chairman Doug Gilpen  
Sumter County Board of County Commissioners  
7375 Powell Road  
Wildwood, Florida 34785  
Doug.Gilpin@sumtercountyfl.gov

this 11<sup>th</sup> day of February 2013.

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Petition complies with the font requirements of Florida Rule of Appellate Procedure 9.100(l).

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR SUMTER COUNTY, FLORIDA

SANDRA ZAJAC, WILLIAM ZAJAC,  
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\_\_\_\_\_ /

**APPENDIX**

EXHIBIT A      Approval of Major Special Use to Allow  
Entertainment Park (S2012-0004), recorded on  
January 23, 2013.

4/4/12  
Credit

R → Comm

**SUMTER COUNTY ZONING AND ADJUSTMENT BOARD**  
**December 17, 2012**

**SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**  
**January 8, 2013**

**CASE NO.** S2012-0004

**APPLICANT:** Otsego Holdings LLC, et al.

**REPRESENTATIVE:** Cliff Wittman

**REQUESTED ACTION:** Major Special Use to allow an entertainment park

**LEGAL DESCRIPTION:** Sec. 29, Twp. 18S, Rng. 22E: The Highlands at Oak Hill Phase One PB 9 pgs 25 – 25E Lots 1 – 35 & 37 – 91 & Tracts B & C & All less SW ¼ of SW ¼ of SW ¼ & less Rd. R/W less sub-surface rights in NE ¼ of NE ¼ & less commence at SE cor of NE ¼ run N 578.72' N 41°31'4" W 79.14' to W R/W CR 475 & POB cont N 41°31'4" W 1099.16' N 50°52'12" E 927.47' to W R/W C-475 S 1408.33' to POB less the Highlands at Oak Hill Phase One & Phase One –A less the Highlands at Oak Hill Phase One PB 9 Pgs 25 – 25E & Sec. 30, Twp. 18S, Rng. 22E: N ¾ of E ½ & Sec. 32, Twp. 18S., Rng. 22E: NE ¼ of NW ¼ & E ½ of NW ¼ of NW ¼ & NE ¼ lying north of SR 44 & that part of NW ¼ of SE ¼ lying N of SR 44 less Highland at Oak Hill Phase One PB 9 Pgs 25 – 25E

**EXISTING ZONING:** RR1C

**EXISTING USE:** Agricultural/Vacant

**FUTURE LAND USE:** Agricultural

**PARCEL SIZE:** 1077.69 acres MOL

**GENERAL LOCATION:** NW corner of SR 44 and C-475

**CASE SUMMARY:**

The subject property is located on the northwest corner of SR 44 and C-475 in the unincorporated area of Sumter County. The subject property is approximately 1077.69 acres MOL, located in the Agricultural area of the Future Land Use Map (FLUM), zoned RR1C, and is presently substantially vacant. The subject property is surrounded by agricultural and rural residential uses.

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Otsego Holdings LLC

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DC, Gloria R. Hayward, Sumter County Page 1 of 5 B:2554 P:27



The subject property is accessed by a minor collector roadway C-475.

The applicant is requesting a Major Special Use Permit for an outdoor sports and musical entertainment park. The applicant's proposed operation consists of the following: an open air stage providing for a music venue seating approximately 7500 patrons, ATV and 4x4 riding trails and mud holes, 4x4 mud/sand track area, 4x4 rock climb area, picnic/camping areas, adventure run mud/water course, tractor/truck pull area, grass parking area, security and first aid stations, airboat track, equipment barn, office trailer, security/safety lighting, bathrooms, handicap parking, helipad area, vendor area, ticket/booths, ATV/4x4 wash station, water volleyball/sand area, announcers booth, and play ground.

Proposed days and hours of operation are as follows:

Thursday 12:00 pm for event staff only  
Friday 12:00 pm for event participants and operations  
all entertainment related motorized vehicle operations shall cease at sunset  
all other operations shall cease at 10:00 pm  
Saturday 9:30 am for event participants and spectators  
all entertainment related motorized vehicle operations shall cease at sunset  
all other operations shall cease at 10:00 pm  
Sunday 9:30 am to 5:00 pm except holiday weekends, excluding Christmas, which will follow Saturday schedules  
Monday (holidays excluding Christmas) 9:30 am to 5:00 pm

Additionally, the applicant will conduct a maximum of one concert event per month with the option of having up to five (5) one (1) day fund raising events during a twelve (12) month calendar period. Park hours of operation for fund raising weekend one day events will be from 7:00 am to 10:00 pm.

The outdoor sports and musical entertainment park will be owned by Otsego Holdings, LLC leased to Sumter County Outdoors, LLC.

The applicant has submitted a traffic management plan prepared by Kimley-Horn and Associates, which has been provided to the Board under separate cover. The analysis was based upon the peak projected traffic volume associated with concert events. This analysis and plan indicate a probable one hour peak traffic impact following the conclusion of events and a lesser pre-event impact over a longer time period. The determination as to whether this level of traffic impact is acceptable is subjective, but it appears that significant impacts on the road system will be of limited duration and infrequent.

The outdoor sports and musical entertainment park is proposing the sound Db/levels for music and event noise output will be monitored and controlled based on Sumter County Code Article VI, Section 16 - Noise Control.

Water for the outdoor sports and musical entertainment park activities will be provided by existing wells.

The power required for the outdoor sports and musical entertainment park will be accessed from existing power transformers.

### **CASE ANALYSIS:**

The subject site is currently designated in the Agricultural land use and zoned RR1C. The Land Development Code provides for public parks as a permitted use in the RR1C zoning district, and also permits colleges and universities (including associated sports facilities) and wastewater treatment plants as allowable uses with Special Land Use Permits. The staff has determined these uses are similar enough to the proposed use in potential impact to allow consideration of the Special Land Use Permit application. The proposed site is approximately 1100 acres, which, if developed under the current zoning, would have a significant impact on roads and other public utilities. In reviewing data prior to our analysis, staff determined the Busch Gardens facility in Tampa is comprised of approximately 355 total acres, all four theme parks in the Walt Disney World Resort in Orlando comprise approximately 1100 acres in total and the Universal Theme Park facility in Orlando comprises approximately 255 acres. These facts are relevant to the extent they demonstrate the applicant has more than adequate land to accommodate the proposed facilities and uses without unreasonable impact on adjoining properties. The County has no current zoning district that specifically provides for the uses requested.

The proposed use can comply with Section 13-362 of the Sumter County Land Development Code if adequate provisions are made to address potential traffic and noise impacts. The relevant standards are as follows:

- The use will be in harmony with the purpose and intent of the Land Development Code and will not create significant adverse impacts to the surrounding properties.
- The use will be compatible with surrounding uses as well as existing and anticipated land use patterns in the area.
- The proposed use is not an intense use; therefore, it will not adversely affect the public interest.
- The site provides adequate area for traffic circulation and access for the property.
- The location, construction, operation, and maintenance of the proposed use shall have no more than a minimal adverse affect on the environment and public health, safety, and welfare.

### **DEVELOPMENT SERVICES DIVISION STAFF CONCLUSIONS:**

Staff has deemed the requested application sufficient and in compliance with the minimum requirements of the Sumter County Land Development Code and Comprehensive Plan and recommends approval subject to the following conditions:

1. The special use is for an outdoor sports and musical entertainment park.
2. The traffic management plan shall be implemented as approved and the operator of the facility shall be liable for any additional off-site road or signal improvements that necessarily result from the operation of the proposed facility.
3. The facility shall be developed consistent with the layout and/or general development criteria provided as part of the application. Any significant change to the general layout or proposed development parameters layout shall require this special use to be amended.

4. The facility shall be operated to minimize noise impacts to surrounding properties. If it is determined the noise impacts are excessive based on Sumter County Code of Ordinance Noise Control Section 16, then the applicant shall apply appropriate methods to reduce noise impacts. The methods shall be approved by the County.
5. Concert events at the facility shall be limited to a maximum of one event per month with the option to have up to five (5) one (1) day fund raising events during a twelve (12) month period.
6. Days and hours of operation shall be as follows:  
  
Thursday 12:00 pm for event staff only  
Friday 12:00 pm for event participants and operations  
all entertainment related motorized vehicle operations shall cease at sunset  
all other operations shall cease at 10:00 pm  
Saturday 9:30 am for event participants and spectators  
all entertainment related motorized vehicle operations shall cease at sunset  
all other operations shall cease at 10:00 pm  
Sunday 9:30 am to 5:00 pm except holiday weekends, excluding Christmas, which will follow Saturday schedules  
Monday (holidays excluding Christmas) 9:30 am to 5:00 pm  
  
The park will not be open the following days: December 23<sup>rd</sup> – 26<sup>th</sup>.  
  
Park hours of operation for fund raising weekend one day events will be from 7:00 am to 10:00 pm.
7. If it is determined by the County that the facility is operating in violation of these conditions or is resulting in negative impacts to public safety, health, or welfare, then this special use may be suspended or revoked by the County.
8. Traffic shall control will be directed by contracted law enforcement during events in accordance with the traffic management plan provided.
9. The outdoor sports and musical entertainment park shall comply with setback requirements of the RR1C zoning district.
10. Approval of the Special Use Permit is for the current property owners, Otsego Holdings, LLC and Penfield Holdings, LLC leased to Sumter County Outdoors, LLC and shall expire with the sale or transfer of the subject property.
11. This Special Use Permit may be suspended, revoked, or amended for failure to adhere to the conditions, violation of other laws or ordinances, or when necessary to protect the public's health, safety, and welfare consistent with Section 13-144(e) of the Sumter County Land Development Code.

The proposed use meets the requirements of Section 13-362 of the Sumter County Land Development Code in that:

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Otsego Holdings LLC

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The proposed use meets the requirements of Section 13-362 of the Sumter County Land Development Code in that:

- The proposed use is in harmony with the purpose and intent of the Sumter County Land Development Code by being designed so as not to cause unreasonable negative impact to the surrounding property owners and community.
- The proposed use is compatible with the surrounding uses and existing and anticipated land use patterns in the area by virtue of the size of the proposed site accommodating wide separation of proposed uses from existing development.
- The proposed use has sufficient area for adequate traffic circulation. With appropriate traffic management, it will not create hazardous vehicular or pedestrian traffic conditions, or parking congestion; therefore, the use will not adversely affect the public interest.
- The subject property has adequate ingress and egress along with an adequate amount of area for off street parking, loading and unloading.
- The proposed improvements for the use will have no more than a minimal adverse effect on the environment and public health, safety, and welfare.
- The proposed structures meet the minimum setback requirements for the property's zoning classification and all other general code requirements and the requirements of the RR1C zoning district.
- It is not anticipated that the use will create a detrimental impact to the neighborhood environment and infringe on the rights of property owners in the vicinity of the subject property.
- The site is of adequate size to provide existing natural screening to surrounding properties and wide separation of event facilities from surrounding properties.

Based on the characteristics of the proposed outdoor sports and musical entertainment park and proposed site plan submitted by the applicant, the proposed use is compatible with the existing rural nature of the surrounding area and will not create unreasonable adverse impacts on surrounding properties:

**Notices Sent:**        39                      (In objection)        56                      (In favor)        0

**Zoning & Adjustment Board Recommendation:**        Approval (3-2)

**Board of County Commissioners Final Action:** Approval (4-1)

**Board of County Commissioners Chairman:**

  
DOUG GILPIN